If someone were to offer the "voluntary" CMA arbitration agreement to a patient bleeding to death on the operating table, I sincerely doubt that any court would find such an agreement to be voluntarily executed. Such a patient would not have a realistic opportunity to look elsewhere. However, in all *non*emergency situations, you can simply hand the patient the yellow pages and tell him to go elsewhere if he does not want to sign a binding arbitration agreement.

Finally, it should be noted that the *Giuliucci* and *Madden* decisions were decided under the general California law as it existed prior to and without the additional benefit of new California Code of Civil Procedure Section 1295, as adopted by the Keene bill. If anything, that section further enhances the enforceability of binding arbitration agreements and is directly responsive to Dr. Bordin's quoted language on the *Tunkl* case. The new statute provides as follows:

> Any contract for medical services which contains a provision for arbitration of any dispute as to [medical malpractice] . . . is *not a contract of adhesion nor unconscionable nor otherwise improper* where it complies with subdivisions a, b, and c, of this section.

Subdivisions a, b, and c, of the new law are very simple to comply with. Once compliance is made, the enforceability of the agreement is guaranteed by two California Supreme Court decisions directly in point and a formal legislative enactment. What could be more definitive?

I hasten to add that the California Medical Association-California Hospital Association arbitration agreement is a thoughtful, well-prepared document. I believe any such document prepared for general use and without specific advice of counsel must, however, be designed to satisfy the lowest common denominator. That means many physicians using the CMA-CHA package will have an unnecessarily limited or overcautious document when the advantages to be gained by a custom-tailored agreement are far greater.

JAMES R. BUTLER, JR., Esq.
Beverly Hills

* * *

TO THE EDITOR: Bordin's comments in the November issue [Bordin EH: Arbitration agreements (Correspondence). West J Med 125:400, Nov 1976] are worthy of some rebuttal. He is comparing apples to oranges in trying to make parallels between arbitration agreements and exculpatory agreements.

Bordin implies that there has not been a test case on arbitration that has withstood the appeals system. *Madden vs. Kaiser* is a most recent decision at the California Supreme Court level supporting both the concept of arbitration in medical malpractice and the authority of the employees' association that Madden belonged to to negotiate an arbitration agreement on her behalf without her express consent. The language of the majority decision expresses the thought that the day of judicial hostility toward arbitration in medical malpractice is over and that attempts to resurrect those days should not occur. The majority decision also pointed out that the patient's references against arbitration were both old and from other states. In the minority decision the lone dissenter quoted only old material and incidentally mainly quoted articles he himself had written.

Bordin's quotes from *Tunkl* are attempts to resurrect the days of judicial hostility toward arbitration in medical malpractice. It would be interesting to know if Bordin is or is not using arbitration agreements at all.

EDWARD B. FEEHAN, MD
Chairman, Legislation-Arbitration Committee
Merced-Mariposa Medical Society
Merced, California